

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 13, 2001

IN RE:)	
)	
BELLSOUTH TELECOMMUNICATIONS INC.'S)	DOCKET NO.
TARIFF FOR CONTRACT SERVICE)	00-01041
ARRANGEMENT (TN99-4875-00))	

**ORDER GRANTING APPROVAL OF BELLSOUTH
CONTRACT SERVICE ARRANGEMENT (TN99-4875-00)**

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on December 19, 2000 on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. TN99-4875-00 ("CSA"). BellSouth filed Tariff No. 00-01041 on November 21, 2000, with a proposed effective date of December 21, 2000.

Based upon careful consideration of the tariff filing, the Authority makes the following findings and conclusions:

1. The purpose of this CSA is to provide a Volume and Term Discount to the customer identified in the filing. Through this arrangement, the customer agrees to meet an annual revenue commitment of 6.3 million dollars (\$6,300,000.00) in year one and 6.93 million dollars (\$6,930,000.00) in year two in exchange for a sixteen percent (16%) discount.
2. The term of this CSA is twenty-four (24) months.

3. This CSA contains two termination provisions. The first relates to the termination of the underlying specific service and is linked to the tariff provision applicable to the underlying service. The second applies to the termination of the Volume and Term agreement. Because the first termination provision is contained in the underlying, previously approved tariff, it is only the second termination provision that is before the Authority in this docket.

4. In its November 21, 2000 cover letter included with the CSA filing, BellSouth agreed to notify the customer¹ that upon early termination of the CSA without cause, the lesser of the following termination liability charges would apply to the termination of the Volume and Term Agreement:

- a. The amounts specified in the CSA the customer signed;²
- b. The total of the repayment of discounts received during the previous twelve (12) months of service, the repayment of the prorated amount of any waived or discounted non-recurring charges, and the repayment of the prorated amount of any documented contract preparation, implementation and tracking, or similar charges; or
- c. Six percent (6%) of the total CSA amount.

5. BellSouth provided an addendum executed by the customer stating that the customer was aware of competitive alternatives available to it in Tennessee and that the

¹ BellSouth agreed during the October 24, 2000 Authority Conference that it would send the notice to the customer upon approval of the CSA by the Authority. *See Transcript of Proceedings*, p. 15 (Authority Conference October 24, 2000).

² The termination provisions in the CSA require the customer provide written notice of termination sixty (60) days prior to the effective date of the termination and pay termination charges equal to “(1) Discounts received for the life of the Contract or for the previous 12 months, whichever is less, and (2) The prorated portion of the Contract implementation and tracking costs” BellSouth BusinessSM Master Services Agreement, Attachment 1, section 7M (filed Nov. 21, 2000).

customer and BellSouth have agreed on the termination provisions and that the termination charges represent a reasonable estimate of BellSouth's damages in the event of termination.

6. This CSA contains provisions for incentive awards and commitment shortfalls. The customer did not agree to sign that portion of the addendum clarifying the fact that the commitment shortfalls do not apply upon the customer's early termination of the CSA.³

7. BellSouth supplied cost data which indicates that the price of services offered under the CSA exceed their long-run incremental costs. Based on this information, BellSouth has complied with the statutory price floor established in Tenn. Code Ann. § 65-5-208(c).

8. No parties sought to intervene in this docket.

Based on the foregoing findings and conclusions, the Authority unanimously determined that the CSA in this docket should be approved.

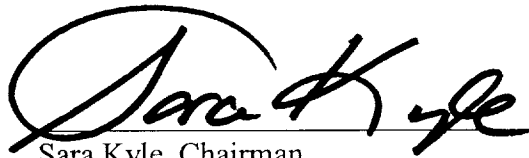
³ Previously, the Authority held:

BellSouth represented that the shortfall provision in the CSA does not apply upon termination of the CSA. Because the language of the CSA could be read to require the payment of both the shortfall provision and termination provision upon termination of the CSA, an amendment explaining that the shortfall provision does not apply upon termination is required.

BellSouth Telecommunications, Inc.'s Tariff to Offer Contract Service Agreement KY98-4958-00 for an 11% Discount on Various Services, Docket No. 99-00244, *Order Granting Approval of BellSouth Contract Service Arrangement (KY 98-4958-00) in Docket No. 99-00244*, p. 11 (Nov. 13, 2000). Since this finding, BellSouth has filed an addendum with each Volume and Term CSA that includes language clarifying the application of the shortfall provision. In this docket, BellSouth provided a copy of an e-mail between two employees of customer evidencing customer's refusal to accept the clarification language.

IT IS THEREFORE ORDERED THAT:

BellSouth Telecommunications, Inc.'s Tariff No. 00-01041 which seeks approval of Contract Service Arrangement No. TN99-4875-00, is hereby approved subject to BellSouth notifying the customer in writing that BellSouth has agreed that, if the customer terminates the CSA prematurely, the shortfall provisions will not apply and BellSouth will not seek to enforce the shortfall provisions.⁴


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director⁵

ATTEST:


K. David Waddell, Executive Secretary

⁴ On July 6, 2001, BellSouth filed a copy of the notification letter sent to the customer. The letter contains language explaining the application of the termination liability limitations and shortfall provisions.

⁵ Chairman Malone has noted that, generally, the underlying tariff termination provisions with respect to the specific services that may be used to meet the volume and term requirements of a Volume and Term CSA contain buyout clauses, sometimes amounting to a ninety percent (90%) or one-hundred percent (100%) buyout. Notwithstanding Chairman Malone's approval of this Volume and Term CSA, he remains of the opinion that tariff termination provisions, however triggered, containing such buyouts are so potentially anticompetitive as to warrant modification by the agency on a going-forward basis.